

PUBLIC HEALTH REGULATIONS

DEPARTMENT OF HEALTH, STATE OF HAWAII

CHAPTER 37

WATER POLLUTION CONTROL

Under and by virtue of the provisions of Chapter 342, Hawaii Revised Statutes, and the Federal Water Pollution Control Act Amendments of 1972, PL 92-500, and all other applicable laws, Chapter 37 of the Public Health Regulations, Department of Health, State of Hawaii, relating to Water Pollution Control, is hereby amended to read as follows:

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Section 1. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this chapter:

(a) "Water Pollution" means

- (1) Such contamination, or alteration of the physical, chemical, or biological properties, of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes, and agricultural, and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards or standards of performance for new sources promulgated by the department.

(b) "Wastes" means waste materials of any kind, whether treated or not, and whether animal, mineral, or vegetable, and whether liquid, gaseous, radioactive, or solid, including sewage and agricultural and industrial and thermal wastes, which cause any state waters to be reduced in quality below the standards applicable to the area as set out in Chapter 37-A of the Public Health Regulations, Department of Health, State of Hawaii.

(c) "Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power and other equipment.

(d) "State waters" means all

- (1) rivers, streams, canals,
- (2) ponds, lakes, reservoirs, provided that drainage ditches, ponds, and reservoirs required as a part of a pollution control system are excluded,
- (3) bays, harbors, channels,
- (4) lagoons,
- (5) coastal and shorewaters, and
- (6) groundwaters, whether private or public, natural or artificial, which are situated within or bordering upon the state.

- (e) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, foundation, or other institution or entity, or governmental agency.
- (f) "Director" means the Director of Health or his duly authorized agent.
- (g) "Act" means the Federal Water Pollution Control Act, as amended 33 U.S.C. 1314, et seq.
- (h) "Refuse Act" means section 13 of the Rivers and Harbors Act of March 3, 1899.
- (i) "EPA" means the U.S. Environmental Protection Agency.
- (j) "Administrator" means the Administrator of the U.S. Environmental Protection Agency.
- (k) "Regional Administrator" means the EPA Regional Administrator of Region IX.
- (l) "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the Act and includes any state or interstate program which has been approved by the Administrator, in whole or in part, pursuant to section 402 of the Act.
- (m) "NPDES Application" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the Administrator pursuant to the Act) for application for an NPDES permit.
- (n) "NPDES Reporting Form" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the Administrator pursuant to the Act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.
- (o) "NPDES Permit" means any permit or equivalent document or requirements issued by the Director after enactment of the Federal Water Pollution Control Amendments of 1972, to regulate the discharge of pollutants pursuant to section 402 of the Act and Chapter 342, HRS.
- (p) "NPDES Form" means any issued NPDES permit and any uniform national form developed for use in the NPDES and prescribed in regulations promulgated by the Administrator, including the Refuse Act application, the NPDES application, and the NPDES reporting forms.
- (q) "Refuse Act Application" means the application for a permit under the Refuse Act.
- (r) "Refuse Act Permit" means any permit issued under the Refuse Act.
- (s) The definitions of the following terms contained in section 502 of the Act shall be applicable to such terms as used in this part unless the context otherwise requires: "municipality," "pollutant," "navigable waters," "territorial seas," "contiguous zone," "ocean," "effluent limitations," "discharge of a pollutant," "toxic pollutant," "point source," "biological monitoring," "discharge," "schedule of compliance," and "industrial user."

- (t) "National Data Bank" means a facility or system established or to be established by the Administrator for the purposes of assembling, organizing, and analyzing data pertaining to water quality and the discharge of pollutants.
- (u) "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act and Chapter 342, Hawaii Revised Statutes, and rules and regulations of the Department of Health, State of Hawaii, and which have been (1) approved or permitted to remain in effect by the Administrator pursuant to section 303(a) or 303(c) of the Act, or (2) promulgated by the Administrator pursuant to section 303(b) of the Act.
- (v) "Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act, Chapter 342, Hawaii Revised Statutes, and rules and regulations of the Department of Health, State of Hawaii, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions and pretreatment standards.
- (w) "Minor discharge" means any discharge which (1) has a total volume of less than 50,000 gallons per day on every day of the year, and (2) is not identified by the Director, the Regional Administrator or by the Administrator in regulations issued pursuant to section 307(a) of the Act as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a "minor discharge" as defined herein.
- (x) "Standard of performance" means a standard for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Director determines to be achievable through application of the best demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.
- (y) "New source" means any source the construction of which is commenced after the adoption of regulations prescribing a standard of performance which will be applicable to such source.

Section 2. GENERAL POLICY OF WATER QUALITY STANDARDS

It is the public policy of this state to conserve the waters of the state, and to protect, maintain, and improve the quality thereof for drinking water supply, and food processing, for the growth, support and propagation of shellfish, fish and other desirable species of marine and aquatic life, for oceanographic research, for the conservation of coral reefs and wilderness areas, and for domestic, agricultural, industrial, recreational, and other legitimate uses; and to provide that no waste be discharged into any waters of this state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; and to provide for the prevention, abatement, and control of new and existing water pollution; and to cooperate with the federal government in carrying out these objectives.

Therefore, waters whose qualities are higher than established Water Quality Standards shall not be lowered in quality unless it has been affirmatively demonstrated to the Director that such change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, such waters. Any industrial, public, or private project or development which could constitute a new source of pollution or an increased source of pollution will be required, as part of the initial project design to provide the highest and best degree of waste treatment practicable under existing technology. In implementing the policy of this paragraph as it relates to water under federal jurisdiction, the Administrator of the Environmental Protection Agency will be kept advised and provided with such information as he will need from time to time to protect the interests of the United States and the authority of the Administrator in maintaining high quality of the waters of the United States.

Section 3. GENERAL PROHIBITION

No person, including any public body, shall use any state waters for the disposal of waste or the discharge of a pollutant, engage in activity which causes state waters to become polluted, or violate any NPDES permit or term or condition thereof without first securing approval in writing from the Director.

No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the Director.

Section 4. APPLICATION FOR NPDES PERMIT

Every applicant for an NPDES permit must comply with NPDES filing requirements. Procedures and requirements include the following:

(a) Any person discharging pollutants must:

- (1) Have filed a complete Refuse application; or,
- (2) File a complete NPDES application no later than 60 days following receipt by the applicant of notice from the Director that the applicant's previously filed Refuse Act application is so deficient as not to have satisfied the filing requirements; or,
- (3) File a complete NPDES application within a stated period, not to exceed any applicable periods specified in federal regulations for persons filing under the NPDES.

(b) Any person wishing to commence discharges of pollutants after the applicable period in paragraph (a)(3) of this section, must file a complete NPDES application either (1) no less than 180 days in advance of the date on which it is desired to commence the discharge of pollutants, or (2) in sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the Act, or with any applicable zoning or siting requirements established pursuant to section 208(b) (2) (C) of the Act, and any other applicable water quality standards and applicable effluent standards and limitations.

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- (c) Application for NPDES permits shall be made by the applicant on an NPDES application furnished by the Director and shall be accompanied by two copies of complete data, siting information, plan description, specifications, drawings, and other detailed information necessary to determine in what manner the new or existing treatment works or wastes outlet will be constructed or modified, operated, and controlled.
 - (d) The Director may require the submission of additional information after a Refuse Act or an NPDES application has been filed, and may insure that, if a Refuse Act or NPDES application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.
 - (e) Filing fee. Every applicant for an NPDES permit shall pay a filing fee of \$100. This filing fee shall be submitted with the NPDES application and shall not be refunded nor applied to any subsequent NPDES application following final action of denial of an NPDES application.
 - (1) Where an NPDES application is filed for an NPDES permit for a substantial alteration or addition to a treatment works or waste outlet and where an NPDES permit had previously been granted for such treatment works or waste outlet, the applicant shall be assessed the fee of \$100:
 - (2) Where an application is filed for an NPDES permit by reason of change in ownership from one person to another, and no alteration or addition of the existing or proposed treatment works or waste outlet, or change in an approved implementation plan or location has been made, the applicant shall pay only a \$5.00 fee which shall be submitted with the NPDES application.
 - (3) Where the NPDES application is filed for an NPDES permit by reason of transfer from one permanent location to another permanent location, and there has been no alteration or addition to the treatment works or waste outlet and no change of ownership, the applicant shall pay the \$100 filing fee which shall be submitted with the NPDES application.
 - (4) A request for a duplicate NPDES permit shall be made in writing to the Director within ten (10) days after the destruction, loss, or defacement of an NPDES permit. A fee of \$1.00 shall be charged and submitted with the request.
 - (5) Fees shall be made payable to the State of Hawaii.
 - (6) Exemptions. Any federal, state, or county government agency shall be exempt from paying any fees as prescribed herein.

Section 5. RECEIPT AND USE OF FEDERAL DATA

The Director shall receive any relevant data collected by the Regional Administrator prior to participation in the NPDES in such manner as the Director and the Regional Administrator shall agree. Any agreement between the state and the Regional Administrator shall provide for at least the following:

- (a) Prompt transmittal to the Director from the Regional Administrator of copies of any Refuse Act applications, NPDES applications, or other relevant data collected by the Regional Administrator prior to the state or interstate agency's participation in the NPDES; and
- (b) A procedure to insure that the Director will not issue an NPDES permit on the basis of any Refuse Act or NPDES application received from the Regional Administrator which the Regional Administrator has identified as incomplete or otherwise deficient until the Director receives information sufficient to correct the deficiency to the satisfaction of the Regional Administrator.

Section 6. TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

The Director shall transmit to the Regional Administrator copies of NPDES forms received by the state in such manner as the Director and Regional Administrator shall agree. Any agreement between the state and Regional Administrator shall provide for at least the following:

- (a) Prompt transmittal to the Regional Administrator of a complete copy of any NPDES form received by the state;
- (b) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES form received by the state;
- (c) Procedures for acting on the Regional Administrator's written waiver, if any, of his rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof; and,
- (d) An opportunity for the Regional Administrator to object in writing to deficiencies in any NPDES application or reporting form received by him and to have such deficiency corrected. If the Regional Administrator's objection relates to an NPDES application, the Director shall send the Regional Administrator any information necessary to correct the deficiency and shall, if the Regional Administrator so requests, not issue the NPDES permit until he receives notice from the Regional Administrator that the deficiency has been corrected.
- (e) An opportunity for the Regional Administrator to identify any discharge which has a total volume of less than 50,000 gallons per day on every day of the year as a discharge which is not a minor discharge. If the Regional Administrator so identifies a discharge and notifies the Director, the Director shall require the applicant for such discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator in his notification to the Director.
- (f) Procedures for the transmittal, if requested by the Regional Administrator, of copies of notice received by the Director from publicly owned treatment works pursuant to section 22 (c) and (d).

Section 7. IDENTITY OF SIGNATORIES TO NPDES FORMS

The Director shall require that any NPDES form submitted to the Director be signed as follows:

- (a) In the case of corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility for which the discharge described in the NPDES form originates.
- (b) In the case of a partnership, by a general partner.
- (c) In the case of a sole proprietorship, by the proprietor.
- (d) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

Section 8. FORMULATION OF TENTATIVE DETERMINATIONS AND DRAFT NPDES PERMIT

- (a) The Director shall formulate and prepare tentative staff determinations with respect to a Refuse Act or NPDES application in advance of public notice of the proposed issuance or denial of an NPDES permit. Such tentative determinations shall include at least the following:
 - (1) A proposed determination to issue or deny an NPDES permit for the discharge described in the Refuse Act or NPDES application; and,
 - (2) If the determination proposed in paragraph (a) of this section is to issue the NPDES permit, the following additional tentative determinations:
 - (i) Proposed effluent limitations, identified pursuant to Section 19 and Section 20 for those pollutants proposed to be limited;
 - (ii) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified pursuant to section 21; and
 - (iii) A brief description of any other proposed special conditions (other than those required in section 22) which will have a significant impact upon the discharge described in the NPDES application.
- (b) The Director shall organize the tentative determinations prepared pursuant to paragraph (a) of this section into a draft NPDES permit for the Refuse Act or NPDES application.

Section 9. PUBLIC NOTICE

- (a) Public notice of every complete application for an NPDES permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny an NPDES permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the following:

- (1) Notice shall be circulated within the geographical areas of the proposed discharge; such circulation may include any or all of the following:
 - (i) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;
 - (ii) Posting near the entrance to the applicant's premises and in nearby places; and
 - (iii) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
 - (2) Notice shall be mailed to any person or group upon request; and
 - (3) The Director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all NPDES applications within the state or within a certain geographical area.
- (b) The Director shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES application. All written comments submitted during the 30-day comment period shall be retained by the Director and considered in the formulation of his final determination with respect to the NPDES application. The period for comment may be extended at the discretion of the Director.
- (c) The contents of public notice of applications for NPDES permits shall include at least the following:
- (1) Name, address, phone number of agency issuing the public notice;
 - (2) Name and address of each applicant;
 - (3) Brief description of each applicant's activities or operations which result in the discharge described in the NPDES application (e.g., municipal waste treatment plant, raw sugar factory, pineapple cannery);
 - (4) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
 - (5) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
 - (6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph (b) of this section and any other means by which interested persons may influence or comment upon those determinations; and

- (7) Address and phone number of state or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to section 8(b), request a copy of the fact sheet described in section 10, and inspect and copy NPDES forms and related documents.

Section 10. FACT SHEET

- (a) For every discharge which has a total volume of more than 500,000 gallons per day on any day of the year, the Director shall prepare and, following public notice, shall send, upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:
- (1) A sketch or detailed description of the location of the discharge described in the NPDES application;
 - (2) A quantitative description of the discharge described in the NPDES application which includes at least the following:
 - (i) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
 - (ii) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit; and
 - (iii) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under sections 301, 302, 306, or 307 of the Act and regulations published thereunder;
 - (3) The tentative determinations required under section 8;
 - (4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge; and
 - (5) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (i) The 30-day comment period required by section 9 (b);
 - (ii) Procedures for requesting a public hearing and the nature thereof; and
 - (iii) Any other procedures by which the public may participate in the formulation of the final determinations.

- (b) The Director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

Section 11. NOTICE TO OTHER GOVERNMENT AGENCIES

The Director shall notify other appropriate government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Procedures for such notification include the following:

- (a) At the time of issuance of public notice pursuant to section 9, transmission of a fact sheet to the appropriate district engineer of the Army Corps of Engineers of NPDES applications for discharges (other than minor discharges) into navigable waters:
 - (1) The Director and the district engineer for each corps of engineers district within the state or interested area may arrange for (i) notice to the district engineer of minor discharges, (ii) waiver by the district engineer of his right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof, and (iii) any procedures for the transmission of forms, period for comment by the district engineer (e.g., 30 days), and for objections of the district engineer.
 - (2) A copy of any written agreement between the Director and a district engineer shall be forwarded to the Regional Administrator and shall be made available to the public for inspection and copying.
- (b) A procedure for mailing copies of public notice (or, upon specific request, copies of fact sheets) for application for NPDES permits to any other federal, state, or local agency, upon request, and providing such agencies an opportunity to respond, comment, or request a public hearing. Such agencies shall include at least the following:
 - (1) The agency responsible for the preparation of an approved plan pursuant to section 208(b) of the Act; and
 - (2) The state agency responsible for the preparation of a plan pursuant to an approved continuous planning process under section 303(e) of the Act, unless such agency is under the supervision of the Director.
- (c) Procedures for notice to and coordination with appropriate public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

Section 12. PUBLIC ACCESS TO INFORMATION

- (a) The Director shall insure that any NPDES forms (including the draft NPDES permit prepared pursuant to section 8(b) or any public comment upon those forms pursuant to section 9(b) shall be available to the public for inspection and copying during established office hours. The Director, in his discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency pursuant to its participation in the NPDES.

- (b) The Director shall protect any information (other than effluent data) contained in such NPDES form, or other records, reports, or plans as confidential upon a showing by any person that such information if made public would divulge methods of processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES form, the Director shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he shall request advice from the Office of General Counsel, stating the reasons for his disagreement with the determination of the Director. The Regional Administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The general counsel shall determine whether the information in question would, if revealed, divulge methods of processes entitled to protection as trade secrets. In making such determinations, he shall consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the general counsel determines that the information being considered does not contain trade secrets, he shall so advise the Regional Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator shall communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator shall then make available to the public, upon request, that information determined not to constitute trade secrets.
- (c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the Regional Administrator, or his authorized representative, who shall maintain the disclosed information as confidential.
- (d) The Director shall provide facilities for the inspection of information relating to NPDES forms and shall insure that state employees honor requests for such inspection with due regard for the dispatch of other public duties. The Director shall either (1) insure that a machine or device for the copying of papers and documents is available for a reasonable fee, or (2) otherwise provide for or coordinate with copying facilities or services such that requests for copies of nonconfidential documents may be honored promptly.

Section 13. PUBLIC HEARINGS

The Director shall provide an opportunity for the applicant, the Regional Administrator, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to NPDES applications. Any such request or petition for public hearing shall be filed within the 30-day period prescribed in section 9(b) and shall indicate the interest of the party filing such request and the reason why a hearing is warranted. The Director shall hold a hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of NPDES permit applications.

Section 14. PUBLIC NOTICE OF PUBLIC HEARINGS

- (a) Public notice of any hearing held pursuant to section 13 above shall be circulated at least as widely as was the notice of the NPDES application. Procedures for the circulation of public notice for hearings held under section 13 shall include at least the following:
- (1) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;
 - (2) Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application;
 - (3) Notice shall be mailed to any person or group upon prior request; and
 - (4) Notice shall be effected pursuant to subparagraphs (1) and (3) of this paragraph at least thirty (30) days in advance of the hearing.
- (b) The contents of public notice of any hearing held pursuant to section 13 shall include at least the following notice which meets the requirements of this section:
- (1) Name, address, and phone number of agency holding the public hearing;
 - (2) Name and address of each NPDES applicant whose application will be considered at the hearing;
 - (3) Name of water area to which each discharge is made and a short description of the location of each discharge on the water area;
 - (4) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance;
 - (5) Information regarding the time and location for the hearing;
 - (6) The purpose of the hearing;
 - (7) A concise statement of the issues raised by the persons requesting the hearing;
 - (8) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to section 8(b) above, request a copy of each fact sheet prepared pursuant to section 10, and inspect and copy NPDES forms and related documents; and,
 - (9) A brief description of the nature of the hearing, including the rules and procedures to be followed.

Section 15. ISSUANCE OF NPDES PERMITS

The Director may issue an NPDES permit for any period not exceeding five years, and may renew a permit for any additional periods not exceeding five years. Upon expiration of the date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(a) The Director shall issue an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with the best practicable control technology so as to reduce wastes to a minimum. New treatment works or waste outlet are designed in compliance with the National Standards of Performance pursuant to section 306 of the Act.
- (2) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules and regulations of the Department of Health.
- (3) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards.
- (4) A schedule of implementing actions will be followed in order to comply with applicable water quality standards and established effluent limitations.

(b) NPDES permits may include conditions such as:

- (1) Requirement that the applicant provide such facilities as are necessary for monitoring of the authorized waste discharge into state waters and the effects of such wastes on the receiving waters. The program for water and effluent quality monitoring shall be in accordance with section 26 through 31.
- (2) Requirements which will bring the operation of any new or existing wastes sources described in the application within the conditions of paragraph "a" of this section.
- (3) Compliance with any application of effluent standards and limitations, water quality standards, and other requirements by the Director pursuant to sections 19, 20, and 22.

(c) In acting upon an NPDES application for an NPDES permit the Director may deny an NPDES application if the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES application cannot conditionally, or otherwise, meet the conditions of paragraph "a" of this section, or if the discharge is any one of the following:

- (1) Discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste into navigable waters;
- (2) Discharge which the Secretary of the Army acting through the chief of engineers finds would substantially impair anchorage and navigation;
- (3) Discharge to which the Regional Administrator has objected in writing pursuant to any right to object provided the Administrator in section 402(d) of the Act; and
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act.

Section 16. REVOCATION, SUSPENSION, MODIFICATION, OR REVISION OF NPDES PERMIT

- (a) Each NPDES permit shall be subject to revocation, to suspension, to modification, or revision by the Director if he shall determine that:
- (1) There is a violation of any condition of the NPDES permit, or
 - (2) The NPDES permit was obtained by misrepresentation, or failure to disclose fully all relevant facts, or
 - (3) The NPDES permit was willfully defaced, altered, forged, counterfeited, or falsified, or
 - (4) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, or
 - (5) There is a violation of a rule or regulation of the Department of Health, or
 - (6) Such is in the public interest.
- (b) In taking such action the Director may consider operation records, investigation, or other information regarding the treatment works, outlets, or quality of effluent and/or receiving waters. Such action shall be effected by giving written notice to the permittee, which notice shall contain the reasons for the action.
- (c) No NPDES permit shall be revoked, suspended, modified, or revised unless the permittee has had an opportunity for a hearing by the Director.
- (d) Suspension, revocation, modification, or revision of an NPDES permit shall become final 10 days after service of notice on the holder of the NPDES permit or as otherwise specified by the Director. An NPDES permit which has been revoked shall be surrendered forthwith to the Director and all fees shall be forfeited.

Section 17. NPDES PERMIT NON-TRANSFERABLE

An NPDES permit shall not be transferable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another except as provided in section 4.

Section 18. REPORTING DISCONTINUANCE OR DISMANTLEMENT

It shall be required of that person to which the NPDES permit was issued to report to the Director within 30 days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued. The NPDES permit shall then be surrendered forthwith to the Director.

Section 19. APPLICATION OF EFFLUENT STANDARDS AND LIMITATIONS, WATER QUALITY STANDARDS, AND OTHER REQUIREMENTS

- (a) Whenever applicable, NPDES permits shall be subject to the following conditions whether or not expressly stated therein:

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- (1) Effluent limitations under sections 301 and 302 of the Act;
 - (2) Standards of performance for new sources under section 306 of the Act;
 - (3) Effluent standards, effluent prohibitions, and pre-treatment standards under section 307 of the Act;
 - (4) Any more stringent limitation, including those (i) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any state law or regulations (under authority preserved by section 510), or (ii) necessary to meet any other federal law or regulation, or (iii) required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Act and any regulations and guidelines issued pursuant thereto;
 - (5) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the Act;
 - (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306, and 307, such conditions as the Director determines are necessary to carry out the provisions of the Act; and
 - (7) If the NPDES permit is for the discharge of pollutants into the navigable waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (b) In any case where an issued NPDES permit applied the effluent standards and limitations described in sub-paragraphs (1), (2), and (3) of paragraphs (a) of this section, the Director must state that the discharge authorized by the permit will not violate applicable Water Quality Standards and must have prepared some explicit verification of that statement. In any case where an issued NPDES permit applied any more stringent effluent limitation based upon applicable Water Quality Standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable Water Quality Standards.

Section 20. EFFLUENT LIMITATIONS IN ISSUED NPDES PERMITS

In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements pursuant to section 19, the Director shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The Director may, in his discretion

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in addition to the specification of daily quantitative limitations be weight, specify other limitations, such as average or maximum concentration limits.

Section 21. SCHEDULE OF COMPLIANCE IN ISSUED NPDES PERMITS

In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements pursuant to section 19, the Director shall follow the following procedures in setting schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

- (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 19(a) and (b), the permittee shall be required to take specific steps to achieve compliance with the following:
 - (1) In accordance with any legally applicable schedule of compliance contained in:
 - (i) Applicable effluent standards and limitations;
 - (ii) If more stringent, water quality standards; or,
 - (iii) If more stringent, legally applicable requirements listed in section 19(a) and (b); or,
 - (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.
- (b) In any case where the period of time for compliance specified in paragraph (a) of this section exceed nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) is more than nine months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December.
- (c) Either before or up to fourteen (14) days following each interim date and the final date of compliance, the permittee shall provide the Director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.
- (d) On the last day of the months of February, May, August, and November, the Director shall transmit to the Regional Administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the Director of compliance or noncompliance

with each interim or final requirement (as required pursuant to paragraph (b) of this section). Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name and address of each noncomplying permittee;
 - (2) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans; two weeks delay in commencement of construction of treatment facility; failure to notify Director of compliance with interim requirement to complete construction by June 30th, etc.);
 - (3) A short description of any actions or proposed actions by the permittee or the Director to comply or enforce compliance with the interim or final requirement; and
 - (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).
- (e) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, such noncompliance shall constitute a violation of the permit for which the Director may modify, suspend, revise or revoke, or take direct enforcement action.

Section 22. OTHER TERMS AND CONDITIONS OF ISSUED NPDES PERMITS

In addition to the requirements previously specified, each issued NPDES permit shall be subject to the following terms and conditions:

- (a) That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application, or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the Director of notice of such new or increased discharges of pollutants; that the discharge of any pollutants more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (b) That the permittee shall permit the Director or his duly authorized representative, upon the presentation of his credentials:
 - (1) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;
 - (2) To have access to and copy any records required to be kept under terms and conditions of the NPDES permit;

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- (3) To inspect any monitoring equipment or method required in the permit; or
 - (4) To sample any discharge of pollutants.
- (c) That, if the NPDES permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the Director of the following:
- (1) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the Act if such source were discharging pollutants;
 - (2) Except as to such categories and classes of point sources or discharges specified by the Director, any new introduction of pollutants into such treatment works from a source which would be subject to section 301 of the Act if such source were discharging pollutants; and,
 - (3) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on (i) the quality and quantity of effluent to be introduced into such treatment works and (ii) any anticipated impact of such change in the quality or quantity of effluent to be discharged from such publicly owned treatment works.

- (d) That, if the NPDES permit is for discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of sections 204(b); 307, and 308 of the Act. As a means of insuring such compliance, the permittee shall require of each industrial user subject to the requirements of section 307 of the Act to forward copies of periodic notice (over intervals not to exceed nine months) of progress towards full compliance with section 307 requirements, to the permittee and the Director.
- (e) That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit.
- (f) That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standards or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the Director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

Section 23. TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMITS

The Director shall transmit to the Regional Administrator copies of NPDES permits proposed to be issued by such agency in such manner as the Director and Regional Administrator shall agree upon. Any agreement

between the State and the Regional Administrator shall provide for at least the following:

- (a) Except as waived pursuant to paragraph (d) of this section, the transmission by the Director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;
- (b) A period of time (up to 90 days) in which the Regional Administrator, pursuant to any right to object provided in section 402(d) of the Act, may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (c) Procedures for state acceptance or rejection of a written objection by the Regional Administrator; and
- (d) Any written waiver by the Regional Administrator of his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources.

Section 24. TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS

The Director shall transmit to the Regional Administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of such NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.

Section 25. REISSUANCE OF NPDES PERMITS

- (a) The Director shall maintain procedures for the review of applications for reissuance of NPDES permits. The Director shall notify the permittee that any permittee who wishes to continue to discharge after the expiration date of his NPDES permit must file for reissuance of his permit at least 180 days prior to its expiration.
- (b) The scope and manner of any review of an application for reissuance of an NPDES permit shall be within the discretion of the Director but shall be sufficiently detailed as to insure the following:
 - (1) That the permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the expired NPDES permit;
 - (2) That the Director has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports submitted to the Director by the permittee; and
 - (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, or revisions, or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

- (c) The Director shall follow the notice and public participation procedures specified in this Chapter in connection with each request for reissuance of an NPDES permit.
- (d) Notwithstanding any other provision in this part, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever periods ends first.
- (e) Application for reissuance of an NPDES permit shall be made in accordance with section 4.

Section 26. MONITORING

- (a) Any discharge authorized by an NPDES permit may be subject to such monitoring requirements as may be reasonably required by the Director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).
- (b) Any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to section 307(a) of the Act, shall be monitored by the permittee for at least the following:
 - (i) Flow (in gallons per day); and,
 - (ii) All of the following pollutants:
 - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;
 - (B) Pollutants which the Director finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;
 - (C) Pollutants specified by the Administrator, in regulations issued pursuant to the Act, as subject to monitoring; and
 - (D) Any pollutants in addition to the above which the Regional Administrator requests, in writing, be monitored.
- (c) Each effluent flow or pollutant required to be monitored pursuant to paragraph (b) of this section shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

Section 27. RECORDING OF MONITORING ACTIVITIES AND RESULTS

The following shall be the recording requirements for any NPDES permit which requires monitoring of the authorized discharge:

- (a) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his NPDES permit;
- (b) Any records of monitoring activities and results shall include for all samples: (1) The date, exact place, and time of sampling; (2) the dates analyses were performed; (3) who performed the analyses; (4) the analytical techniques/methods used; and (5) the results of such analysis. and,
- (c) The permittee shall be required to retain for a minimum of three years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Director or Regional Administrator.

Section 28. REPORTING OF MONITORING RESULTS

The Director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES reporting forms of monitoring results obtained by a permittee pursuant to monitoring requirements in an NPDES permit. In addition to the NPDES reporting forms, the Director in his discretion may require submission of such other information regarding monitoring results as he determines to be necessary.

Section 29. NPDES MONITORING, RECORDING, AND REPORTING REQUIREMENTS

The Director shall adopt procedures consistent with any national monitoring, recording, and reporting requirements specified by the Administrator in regulations pursuant to the Act.

Section 30. SAMPLING AND TESTING METHODS

- (a) All sampling and testing shall be done in accordance with "Standard Methods for the Examination of Water and Wastewater," published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation, latest edition, and the results calculated in accordance with test procedures approved by the Director. All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.
- (b) The Director may conduct tests of waste discharges from any source. Upon request of the Director, the person responsible for the source to be tested shall provide necessary sampling stations and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge.

Section 31. MALFUNCTION OF EQUIPMENT REPORTING

- (a) In the case of shutdown of water pollution control equipment for necessary scheduled maintenance, the intent to shutdown such equipment shall be reported to the Director at least twenty-four (24) hours prior to the planned shutdown.

Such prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service as well as its location and NPDES permit number.
 - (2) The expected length of time that the water pollution control equipment will be out of service.
 - (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shutdown period.
 - (4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period and the polluttional effects of the wastes to be by-passed.
 - (5) The reasons that it would be impossible or impractical to shutdown the source operation during the maintenance period.
- (b) In the event that any waste discharge, water pollution control equipment, or related facility breaks down in such a manner as to cause the discharge of water pollutants in violation of applicable rules and regulations, the person responsible for such equipment shall immediately notify the Director of such failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

Section 32. AGENCY BOARD MEMBERSHIP

Any board or body which approves NPDES permit applications or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit.

- (a) For the purposes of this section, the term "board or body" includes any individual, including the Director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.
- (b) For the purposes of this section, the term "significant portion of his income" shall mean 10 per cent of gross personal income for a calendar year, except that it shall mean 50 per cent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement.
- (c) For the purposes of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of the state.
- (d) For the purposes of this section, the term "income" includes retirement benefits, consultants fees, and stock dividends.

- (e) For the purposes of this section income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual-fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

Section 33. PENALTIES

Any person who violates the provisions of this Chapter shall be liable for a penalty as provided in Chapter 342, Hawaii Revised Statutes.

Section 34. HEARINGS AND APPEALS

Hearings before the Director shall be held and appeals from any of his decisions for any violation of these regulations shall be made in accordance with Chapters 91 and 342, Hawaii Revised Statutes.

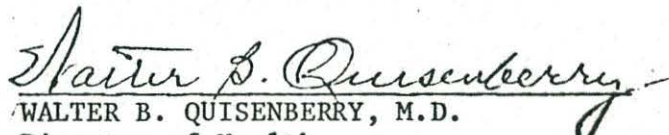
Section 35. SEVERABILITY CLAUSE

If any provision of this Chapter, or its application to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Chapter, shall not be affected thereby.

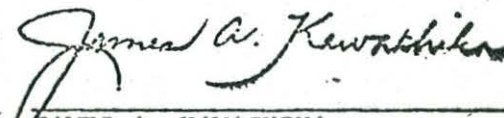
Section 36. EFFECTIVE DATE

This Chapter shall be effective 60 days after approval by the Governor.

I, Walter B. Quisenberry, M.D., Director of Health, State of Hawaii, hereby certify that the foregoing regulations were adopted by the Department of Health on the 2nd day of November, 1973.


WALTER B. QUISENBERRY, M.D.
Director of Health

The foregoing regulations are hereby approved as to form this 25th day of February, 1974.


JAMES A. KAWACHIKA
Deputy Attorney General

The foregoing regulations are hereby approved this 6th
day of March, 1974.



Acting Governor of Hawaii

LT. GOVERNOR'S OFFICE

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REC'D. BY *nyo*

These amendments to Chapter 37, Water Pollution Control of the State Public Health Regulations were adopted on October 29, 1973, following public hearings held on July 30, 1973, July 31, 1973, August 2, 1973, and August 3, 1973, after public notice was published in the Honolulu Advertiser and the Honolulu Star Bulletin on July 2, 1973.

Filed in Lt. Governor's Office: March 6, 1974
Notice of Approval Published in the Honolulu Advertiser and Honolulu Star Bulletin on March 26, 1974.
Effective date: